

Application No.: 10/764,237

Amendment Dated: July 31, 2007

Reply to Notice of Non-Compliant Amendment Dated: July 24, 2007

REMARKS/ARGUMENTS

In response to the **FINAL** Restriction Requirement set forth in the Official Action dated April 24, 2007 in the instant application, Applicants again hereby elect, without traverse, to prosecute the species of the claimed invention identified by the Examiner as Species II as shown in FIGS. 6-9. Currently, claims 1-7 and 11-15 are readable on this species.

If necessary, Applicants reserve the option to file during the pendency of the present application one or more divisional application(s) directed to the aspects of Applicants' invention reflected in non-elected Species I, III, IV and/or V.

Claims 1-4, 6, 11 and 13 stand provisionally rejected under 35 U.S.C. § 101 as claiming the same invention as that of claims 1-4, 5, 9 and 6, respectively of copending Application No. 10/763,846. Such rejection is respectfully traversed.

Claim 1 as amended herein has been modified to specifically state that the claimed adjustment means comprise a "slip friction mechanism." This modification of claim 1 results in an invention that is clearly not the same as the invention that is presently claimed, or may subsequently be claimed, in claim 1 of Applicants' copending Application No. 10/763,846 (the "'846 application"). An Office Action in the '846 application was issued by the USPTO on May 4, 2007 and a corresponding Section 101 rejection was made in that application.

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If Applicants file a response to the outstanding Office Action in the '846 application and, depending on the teachings of prior art that may be cited against the claims of that application, claim 1 of that application will either be canceled or will be amended to recite that the adjustment means thereof comprise at least a "non-slip friction mechanism." If Applicants do not file a response to the outstanding Office Action in the '846 application, that application will become abandoned. Thus, if an amendment is filed in the '846 application, the invention claimed in claim 1 of the present application assuredly will not be the same invention as that claimed in any claims of the '846 application. Alternatively, abandonment of the '846 application will render the instant Section 101 rejection moot.

In any event, the differences between a "slip friction mechanism" and a "non-slip mechanism" in the context of Applicants' invention are quite substantial. To underscore the significant differences between these mechanisms, reproduced herebelow for the Examiner's convenience are certain passages from the instant application (and the '846 application) as originally filed, with emphasis and double emphasis added.

The friction-type adjustment mechanism 136 and certain others described hereinafter may be suitably referred to as a "slip friction mechanism." As used herein, the term "slip friction mechanism" shall mean an assembly which is derivative of a ratchet and a slip friction disk clutch assembly. It is derivative of a ratchet in that it is used to progressively tighten the hair gripping portions 122, 124 about a lock or shock of hair as described below. And, it is derivative of a slip friction disk clutch assembly in that the position

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into which the wearer squeezes the hair gripping portions 122, 124 may be overcome by a rotational force which exceeds the friction force of adjustment mechanism 136, similar to the manner in which a friction clutch slips when the torque applied to the clutch is too great (although, unlike a friction clutch, the various slip friction mechanisms described herein are passive in nature, i.e., they do not serve to drive any parts of the hair holding device). The slip friction mechanisms of the present invention comprise a first surface associated with a first body member (e.g., body member 112), a second surface associated with a second member (e.g., second body member 114), and biasing means for maintaining contact between the first and second surfaces whereby a slip friction interface is created between the first and second surfaces. The shear or friction force generated at the slip friction interface must be sufficient in all instances (regardless of whether a torsion spring or other body member biasing means is present) to cause the body members to remain in the desired hair holding position selected by the user until such time that the user chooses to doff the device by applying a rotational opening force that exceeds the friction or shear force at the slip friction interface.

Present specification (and the '846 application) in the paragraph bridging pages 9 and 10.

The friction-producing surfaces 394 of lug 320 and 406 of lug 318 are adapted for generating a high degree of shear force when brought into engagement with one another by disengagement means 360. Indeed, the friction-producing surfaces 394 of lug 320 and 406 of lug 318, in cooperation with disengagement means 360 produce a friction-type adjustment mechanism 136 that may be suitably referred to as a "non-slip friction mechanism." As used herein, the term "non-slip friction mechanism" shall mean an assembly which is derivative of a ratchet and a non-slip friction disk clutch assembly. It is derivative of a ratchet in that

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it is used to progressively tighten the hair gripping portions 322, 324 about a lock or shock of hair. And, it is derivative of a non-slip friction disk clutch assembly in that the position into which the wearer squeezes the hair gripping portions 322, 324 may not be readily overcome by a rotational force exerted by a user (although, unlike a friction clutch, the various non-slip friction mechanisms described herein are passive in nature, i.e., they do not drive any shaft or other parts of the hair holding device). The non-slip friction mechanisms of the present invention comprise a first surface associated with a first body member (e.g., body member 312), a second surface associated with a second member (e.g., second body member 314), and biasing means for maintaining contact between the first and second surfaces whereby a non-slip friction interface is created between the first and second surfaces. The shear or friction force generated at the non-slip friction interface must be sufficient in all instances to cause the body members to remain in the desired hair holding position selected by the user until such time that the user chooses to doff the device by releasing them using the disengagement means 360 as described below.

Present specification (and the '846 application) in the paragraph bridging pages 18 and 19.

As will be appreciated from the foregoing, a "slip friction mechanism" as called for in amended claim 1, *supra*, requires no more than ordinary user force to unseat the friction force between the friction-producing surfaces. In stark contrast, a "non-slip friction mechanism" requires considerably more than ordinary user force to unseat the friction force between the friction-producing surfaces. Indeed, the friction-producing surfaces of the non-slip friction mechanism are unseated through use of separate disengagement means.

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Accordingly, Applicants respectfully request that the outstanding Section 101 rejection of claims 1-4, 6, 11 and 13 be withdrawn at this time or, in the alternative, at such time that claim 1 of Applicants' copending '846 application is either canceled, amended to include a "non-slip friction mechanism," or the '846 application becomes abandoned, as indicated above.

Claims 1-7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 870,330 to Wilde. Such rejection is respectfully traversed.

In regard to Wilde, Applicants initially note that the Wilde device is an ear ring. It is not a hair holding device. As explained below, it would be essentially useless in holding a lock or shock of hair.

Simple inspection of FIGS. 1 and 5 of the Wilde patent reveals that the opposed convex "dished ends" 7 and 11 of spring frame "a" and clamping member "b", which together apply clamping force to retain the ear ring on a user's ear, present very small cooperative clamping surface areas, i.e., areas sufficient to clamp a user's ear lobe. Even assuming such surfaces were as large as those shown in FIG. 5 of Wilde (which they very likely would not be in practical use), and if they were attempted to be used to clamp a wearer's hair, they would clamp little more than a few strands of hair at the centralmost portions of the clamping surfaces. As a result, even if somehow adapted to a hair holding device, such a clamping arrangement would very

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likely quickly become disengaged from and fall from the user's hair.

Moreover, the hair holding device of Applicants' claim 1 specifically calls for hair gripping portions as being part of the first and second body members. The Examiner's statement of rejection in reliance upon Wilde is conspicuously silent regarding the presence of any hair gripping portions in the Wilde device. As such, the ear ring taught by Wilde does not anticipate the invention defined in Applicants' claim 1.

Accordingly, withdrawal of the outstanding section 102(b) rejection of claim 1 and its dependent claims 2-7 based on Wilde is respectfully requested.

Lastly, Applicants kindly submit that it would be legally improper hindsight to assert that it would have been obvious at the time of Applicants' invention to adapt the teachings of Wilde to hair holding device technology to produce a hair holding device having a slip friction adjustment means as prescribed in Applicants' claim 1. In this regard, the Examiner will note that the Wilde patent issued in 1907. In the 100 years since, as reflected not only the Wilde patent but also in the other references cited by the Examiner as being of interest, none have proposed the use of slip friction adjustment means outside of the ear ring art. In other words, inventors have had a century since issuance of the Wilde patent to conceive of a hair holding including a slip friction adjustment means. None

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have done so. This fact is compelling testament to the non-obviousness of Applicants' invention.

Claims 1-7 stand rejected under 35 U.S.C. § 102(b) as being anticipated by U.S. Patent No. 3,546,750 to Sheehan. Such rejection is respectfully traversed.

The Sheehan device is a one-way gripping device (specifically, a cable tie) for permanently gripping strands, cables, wires and the like (see col. 1, lines 48-52). In fact, the curved arms 22 and 24 of the Sheehan device must be physically severed, thereby destroying the device, in order to remove it from the cables or like members about which it is bound (see col. 3, lines 15-19). The arms 22 and 24 of Sheehan are connected to a one-way ratchet mechanism that prevents reverse rotation of the arms (see col. 1, lines 24-27; col. 3, lines 3-14, lines 20-26 and lines 42-51; and col. 4, lines 1-4). Such a one-way gripping mechanism is the antithesis of the slip friction mechanism particularly recited in Applicants' amended claim 1 and described in Applicants' specification which purposely does permit reverse rotation of the hair gripping members. Consequently, Sheehan does not anticipate the invention defined in Applicants' claim 1.

Accordingly, withdrawal of the outstanding section 102(b) rejection of claim 1 and its dependent claims 2-7 and 11 in reliance upon Sheehan is respectfully requested.

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Claims 1-7 stand rejected under 35 U.S.C. § 102(e) as being anticipated by WO 02/058504 to Rizzuto. Such rejection is respectfully traversed.

But for a concealed spring assembly, Rizzuto teaches a conventional spring-biased hair clip of the type described at length in Applicants' specification from which the presently claimed invention represents a significant and patentable departure. Rizzuto contains no disclosure of adjustment means comprising a "non-slip friction mechanism" as described in Applicants' specification and as recited in applicants' claim 1. In addition, the hair gripping portions 18 of the Sheehan device are not adapted to be squeezed by a user. They are biased into hair-gripping engagement with a user's hair under the influence of tension spring 26. As a result, the hair gripping portions 18 do not cooperate with a slip friction mechanism-containing adjustment means to cause the hair gripping portions to remain at a point at which said hair gripping portions are squeezed together by a user as mandated by Applicants' claim 1. Rizzuto thus does not anticipate the invention defined in Applicants' claim 1.

Accordingly, withdrawal of the outstanding section 102(b) rejection of claim 1 and its dependent claims 2, 3 and 12-15 based on Rizzuto is respectfully requested.

The references cited by the Examiner as being pertinent to Applicants' disclosure have been considered but are not believed

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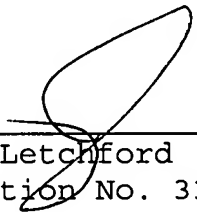
to be any more relevant to the presently claimed invention than those discussed above.

In view of the foregoing, the instant application is believed to be in condition for allowance and, therefore, early issuance thereof is earnestly solicited.

If the Examiner believes that a telephone interview would be beneficial to advance prosecution of the present application, he is invited to contact the undersigned at the telephone number listed below.

Respectfully submitted,

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